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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,213

12/16/2005

Satoshi Aoyama

125602

8979

25944

7590

12/22/2009

OLIFF & BERRIDGE, PLC

P.O. BOX 320850

ALEXANDRIA, VA 22320-4850

EXAMINER

SIDDIQUEE, MUHAMMAD S

ART UNIT

PAPER NUMBER

1795

MAIL DATE

DELIVERY MODE

12/22/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,213	<b>Applicant(s)</b> AOYAMA ET AL.	
	<b>Examiner</b> MUHAMMAD SIDDIQUEE	<b>Art Unit</b> 1795	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/16/2005, 3/14/2007, 3/29/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's arguments with respect to the traversal have not been found persuasive. Applicant argues that since, the subject matter is not divergent and would not be a serious burden to the examiner.

Examiner respectfully disagrees. As stated in the original requirement, there are two different inventions and they fall into two different subclasses. Therefore, the search for the two separate groups is not coextensive and would thus place a burden on the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimioki et al (JP 2003-059519).

Regarding claims 1-4, Kimioki discloses a fuel cell comprising anode, cathode, stabilized zirconia (YSZ) electrolyte and nickel/stabilized zirconia (Ni/YSZ) hydrogen permeable metal layer. Kimioki teaches a starting combustion part (7) (reformer or fuel gas supply module) that supplies a fuel gas containing hydrogen and methane (hydrocarbon compound) to the anode. Kimioki also teaches an oxidizing gas supply module that supplies an oxidizing gas to the cathode. Kimioki further teaches internal reforming section within the fuel electrode where steam reforming of methane in the fuel gas is carried out which is an endothermic reaction. Kimioki also teaches a control section which controls the various sections/operations of the fuel cell system [Fig. 1; paragraph 0020, 0030, 0031, 0041]. Therefore it is within the technical reach of a skilled artisan to make a fuel cell as claimed.

5. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimioki et al (JP 2003-059519) in view of Isom et al (US 2004/0038091 A1).

Regarding claims 5-7, Kimioki does not teach a steam reforming reformer, however, various kind of reformers are used to generate fuel gas for the fuel cells. Isom discloses a fuel cell system comprising a fuel processing system (14) (including a steam reformer (32) ) which converts fuel feed stock, steam and air into hydrogen and carbon dioxide; a control system which controls the reformer based on the internal temperature of the reformer [Abstract; Fig. 1; paragraph 0011, 0024]. Though Isom specifically did not disclose any oxygen supply unit, it is inherent that an oxygen supply unit must be present in the system as evidence from (US 2004/0053088 A). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a reformer and a control system as taught by Isom in order to achieve efficient operation of the fuel cell.

Regarding claim 8, the reaction in the reformer is a heat involved reaction because of the partial oxidation of fuel with oxygen and steam reforming reaction [paragraph 0021].

6. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimioki et al (JP 2003-059519) in view of Ito et al (US 2003/0061937 A1).

Regarding claim 9-10, Kimioki remains silent about the detail of the hydrogen permeable membrane. However, Ito disclose a fuel cell system comprising a hydrogen permeable membrane. The hydrogen-permeable membrane includes a metal base layer (electrolyte layer) containing a Group VA element (inorganic material), two metal middle layers (hydrogen permeable metal layer) which are formed on both of the two

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sides of the metal base layer (electrolyte layer) [Abstract; paragraph 0043-0045]. Ito also teaches that water is supplied in the permeable membrane and it retain there [paragraph 0030, 0031, 0034]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a hydrogen permeable membrane as taught by Ito in the fuel cell of Kimioki in order to extract the hydrogen gas from mixed gases which have been generated in the reforming portion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MUHAMMAD SIDDIQUEE whose telephone number is (571) 270-3719. The examiner can normally be reached on Monday-Thursday, 7:30 am to 4:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 1795

/PATRICK RYAN/  
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